



Policy for Implementation of Islamic Law Under Special Autonomous Province

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Abstract

Siyasah Autonomy and Qanun can be said as a special regulation of regional scope or special regulation that regulates the application of Islamic Sharia in the scope of Aceh region. Siyasah and Autonomy came into force since the enactment of Law No. 44 of 1999 concerning the Implementation of Special Regional Provinces of Aceh after the reform in Indonesia. Siyasah Autonomy and Qanun Aceh is further strengthened by the Law No. 18 of 2001 on Special Autonomy for Special Regions of Aceh as Naggroe Aceh Darussalam Province. Nevertheless, Law No. 18 of 2001 was later amended with the passing of Law No. 11 of 2006 concerning the Government of Aceh. This change is considered as an improvement, because Law No. 18 of 2001 is considered no longer qualified to accommodate the aspirations of acehnese people after a peace agreement in the event of the Free Aceh Movement or GAM rebellion. The existence of a strong relationship between Siyasah Autonomy and Qanun in Aceh with GAM cannot be separated from the existence of Islamic Sharia in the life of the Acehnese people themselves. Both Siyasah Autonomy and Qanun Aceh or GAM are two elements in common – the same makes Islamic Sharia as the basis of their existence. Therefore, it can practically be said that the GAM event had a very large influence on the change of Siyasah Autonomy and Qanun Aceh itself. The existence of a strong relationship between Siyasah Autonomy and Qanun in Aceh with GAM cannot be separated from the existence of Islamic Sharia in the life of the Acehnese people themselves. Both Siyasah Autonomy and Qanun Aceh or GAM are two elements in common – the same makes Islamic Sharia as the basis of their existence. Therefore, it can practically be said that the GAM event had a very large influence on the change of Siyasah Autonomy and Qanun Aceh itself. The existence of a strong relationship between Siyasah Autonomy and Qanun in Aceh with GAM cannot be separated from the existence of Islamic Sharia in the life of the Acehnese people themselves. Both Siyasah Autonomy and Qanun Aceh or GAM are two elements in common – the same makes Islamic Sharia as the basis of their existence. Therefore, it can practically be said that the GAM event had a very large influence on the change of Siyasah Autonomy and Qanun Aceh itself.

Keywords: *Siyasah; Islamic Shari'ah; Qanun; Aceh*

Introduction

The development of the Acehese people cannot be separated from the elements of Islamic Shari'a in it. From a socio-cultural point of view, the element of Islam plays a dominant role in determining the direction of the development of customs and culture of the Acehese people. One of the Dutch anthropologists, BJ Bolland, is of the view that "Being an Aceh is equivalent to being a Muslim (Being an Acehese is identical to being a Muslim)". From this view, it can be believed that the legal values and customary norms in Acehese society have been mixed and integrated with Islamic Shari'a. This belief is reinforced by the adage that is still maintained by many Acehese people to this day, namely "Bak Po Teummeurehum custom, Bak Syah Kuala Law, Bak Putro Pahang Qanun, Reusum Bak Laksamana (Po Teummeurehum: An honor for a person who dies, Law Bak Syiah Kuala: Symbol of Justice, Honesty and Religion, Qanun Bak Putro Pahang: Laws made by the People's Court Deliberation, and Reusam Bak Lakseumana: Protocol).

Apart from this adage, the existence of Islamic Shari'a in Acehese society cannot be separated from the historical value of the development of Acehese society itself. According to Arskal Salim, there are three reasons why Shari'a Islam or Islam is used as a separate identity for the people of Aceh. First, the history of the spread of Islam in Indonesia starts from Aceh or more precisely the City of Pelurak, according to Marco Polo's exploration records. Second, the first Islamic kingdom in Indonesia was in the Aceh region, namely Samudera Passai, according to the discovery of the tombstone of Sultan Samudera Passai, Sultan Malik Al - Saleh. Third, there is a long history of implementing Islamic Sharia in Aceh before Indonesia's independence. Based on these three reasons, it is very natural that Islamic Shari'a is a very common thing to be applied in Aceh, because for the people of Aceh, Islamic Shari'a is no longer part of the law of a religion, but has become an entrenched custom in society.

The third reason put forward by Arskal Aslim above can be found in the application of Aceh as a special autonomous region that legalizes Islamic Sharia as one of the laws with permanent legal force in the region. The implementation of the Autonomy *Siyasah* and Qanun in Aceh can be seen since the enactment of Law (UU) Number 44 of 1999 concerning the Implementation of the Privileges of the Special Region of Aceh Province. This law emphasizes that, a special feature of Aceh lies in, "Special authority to organize religious life, customs, education, and ulama in determining regional policies". The Central Government passed this law as part of the accommodation to the demands of the Acehese who felt they had been treated unfairly during the previous regime. Then in 2001, the Central Government again strengthened the position of this Law with "Special Autonomy" through the ratification of Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as the Province of Nagroe Aceh Darussalam. Through Law Number 18 of 2001 it is allowed to apply Islamic Sharia as a formal legal system, by establishing Sharia courts, and articulating the rules into the form of qanun¹.

The application of the Autonomy *Siyasah* and Qanun as formal law in Aceh cannot be separated from the existence of the GAM separatist movement in Aceh. In general, this movement was born from the disappointment of the Acehese people after the recognition of the Aceh region as part of North Sumatra, after the transfer of Indonesian territorial power from the Dutch Kingdom to the Indonesian Government. This disappointment grew stronger every day which later became the seeds of the Acehese rebellion. The desire of the Acehese people to have a sovereign territory under the Indonesian government was very visible when the Islamic Rebellion occurred in Java in 1950. However, this was not realized in its entirety and only made Aceh a "Special Region" in 1959. This gave the impression for some Acehese that the government that seemed centralized in Java was a new form of Javanese imperialism towards the Aceh region at that time.

This is the reason why Daud Berueh (One of the Islamic Youth Leaders and Aceh Leaders) carried out a rebellion in 1953, and led to the birth of an agreement with the Indonesian Government¹.

¹ Zainal Abidin, dan Adzkar Ahsini, dan Afridal Darmi, dan Roichatul Aswidah, *ANALISIS QANUN – QANUN ACEH BERBASIS HAK ASASI MANUSIA*, (Jakarta : Demos), Hal. 11.

But unfortunately the Indonesian government did not immediately fulfill the agreement until the birth of a new rebellion movement which was announced on 4 December 1976 by Tgk, Hasan Tiro who expressed a desire to separate from Indonesia. Mr. Hasan Tiro also expressed his opinion that the surrender of Aceh to Indonesia in Den Haap in 1949 was an illegal act under international law.² This event was the birth of the insurgency movement which later became known as the birthday of GAM.

Islamic Shari'a in the traditions, customs and culture of the community, differences in views regarding the position of Aceh in Indonesia and the birth of GAM became the biggest driving factors for the establishment of the Autonomous Siyasa and Qanun as formal law in Aceh. The birth of GAM, became one of the main factors in the birth of the Autonomy Siyasa and Aceh Qanun. Apart from being considered a threat to the unity of the Unitary State of the Republic of Indonesia (NKRI), GAM also plays a crucial and massive role as a medium that represents the voices and desires of the Acehnese people towards the Indonesian government. In this case, the Helsinki peace agreement (GAM Peace Agreement) becomes a new reference or benchmark for the enactment of the Autonomy Siyasa and Aceh Qanun. The agreement is a manifestation and a real answer to the enactment of a special autonomy in a region in Indonesia.

Therefore, the GAM peace agreement plays an important role and influence in the enactment of the Autonomy Siyasa and Qanun in Aceh. In understanding and exploring the effect of the GAM peace agreement on the existence of the Autonomy Siyasa and Aceh Qanun, a separate and more in-depth study is needed on this matter. In this journal article, we will examine in more depth the influence between the GAM peace agreement and the implementation of the Autonomy Siyasa and Qanun in Aceh. In understanding and exploring the effect of the GAM peace agreement on the existence of the Autonomy Siyasa and Aceh Qanun, a separate and more in-depth study is needed on this matter.

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Research Methods

The research that we do is a type of qualitative research based on the Observation Method. The observation method itself is a method of collecting data by observing or reviewing carefully in order to find out the conditions and prove the truth of an event raised in a research design.³ The methods was chosen with purpose to comparing from the source to had understanding about the research.⁴ This research about the Qanun Law or Islamic law use a normative juridical methods.⁵ The normative juridical research was a library research.⁶

² M. Ya'kub Aiyub, "REFLEKSI PERJANJIAN DAMAI HELSINKI 2005 – 2008 : KESUKSESAN DAN TANTANGAN KEDEPAN", *Jurnal of Humanity and Social Justice*, Vol. 1, No. 1, 2019, Hal. 36 – 37.

³ Syaifuddin Zuhdi, *Transcendental Justice Law: The Relation of Law and Justice*, *Journal of Trancendental Law*, Vol. 3, No. 1, 2021, pp 30-49

⁴ Khudzaifah Dimiyati and Kelik Wardiono. *Metodologi Penelitian Hukum*. UMS Press. Surakarta. 2004. pp 35

⁵ Khudzaifah Dimiyati, Absori Absori, Kelik Wardiono, Fitrah Hamdani. *Morality and law: Critics upon HLA Hart's moral paradigm epistemology basis based on prophetic paradigm*. 2017. *Jurnal Dinamika Hukum*. Vol 17. No 1. Pp 23-30

⁶ Faizal Adi Surya. *Tinjaun Mediasi Penal Dalam perspektif Hukum Adat dan Hukum Islam*. *Jurnal Jurisprudence*. 2015. Vol. 5. No. 2. Pp 118-126

Discussion

The Form of the Aceh Autonomy and Qanun Policy After the GAM Peace Agreement

Linguistically, Qanun in the Big Indonesian Dictionary is known as "Kanun" which means Laws, Regulations, Books of Laws, Laws and Guidance. The term Kanun is also found in the Aceh Indonesian Dictionary I, namely "Kanun" which means regulations, laws, laws, or customs. Kanun can also be interpreted as the rules or regulations of the ruling King. While the Acehnese themselves know the Qanun in Hadih Maja (Petuan, Teachings, or Doctrine of parents) which reads "Adat Bak Puteumeureuhom, Hokum Bak Shia Ulama, Kanun Bak Putroe Phang, Reusam Bak Laksamana".⁴ Hadih Maja, or Adagium The above contains the division of power in Acehnese society which includes executive, judicial, legislative, and admiral powers (under special conditions). In Hadih Majah, Executive power lies in the hands of the sultan, judicial power lies in the hands of the ulama, legislative power lies in the hands of the People's Court of Justice, and if it is in special conditions such as disaster or war, power can be in the hands of the admiral.

The People's Court of Justice was an assembly authorized to determine Qanun in the Aceh region at that time. Members of the People's Court Council are not elected by the people, but are representatives of "Clever Clever" each "Mukmin" and are led by a "Kadli Malikul Adil". Then during the leadership of Ratu Tajul Alam Safiatuddin, there was a change in the People's Court of Justice, namely the establishment of the Working Body of the People's Court of Justice, with "Rich People Admiral Seri Perdana" as the leader,⁷ While the Qanun itself began to be made in

Acehnese people in government While the Qanun itself began to be made during the reign of Sultan Alaiddin Riayat Syah II Abdul Qahar which was published as "Qanun Al - Asyri" and perfected during the reign of Sultan Iskandar Muda to become "Qanun Meuketa Alam" or now widely known as Adat Aceh.⁸

Qanun Meuketa Alam in the future will still be used and maintained by many Acehnese people so that it is entrenched and persists to this day. In fact, in Malay society the term Qanun itself is widely used to distinguish between a specific rule and a general rule. According to Liaw Yock Fang, the term qanun in Malay culture is used in conjunction with custom and is usually used when you want to distinguish between the laws contained in adat and the laws listed in fiqh books.⁹

Based on this, it can be understood that the Aceh Qanun is not only a series of rules that regulate the lives of the Acehnese people, but has become an identity as well as a spirit that is upheld in the lives of the Acehnese people. Qanun Meuketa Alam (Aceh Qanun) has turned into a separate identity that has been entrenched in Acehnese society even until the time of independence. However, it is like a double-edged sword, although on the one hand the Aceh Qanun helps the Aceh government a lot in regulating and maintaining the governance of the Acehnese people. On the one hand, the Aceh Qanun has also become one of the factors driving the birth of rebellions and divisions against the Indonesian government system. This can be seen from the birth of the GAM separatist movement after Indonesia's independence.⁷

GAM or the Free Aceh Movement is a separatist movement that bases its aim on separating the territory of Aceh from the sovereignty of the Republic of Indonesia. GAM was born out of the disappointment of some Acehnese against the policies of the Indonesian government at that time. This began when the state of Indonesia was officially established and then announced that Aceh was part of

⁷ Bambang Antartika, "KEDUDUKAN QANUN ACEH DITINJAU DARI ASPEK SEJARAH, PENGATURAN, FUNGSI, DAN MATERI MUATAN QANUN", *Jurnal Ilmiah Advokasi*, Vol. 5, No. 1, 2017, Hal. 20 – 21.

⁸ Bambang Antartika, "KEDUDUKAN QANUN ACEH DITINJAU DARI ASPEK SEJARAH, PENGATURAN, FUNGSI, DAN MATERI MUATAN QANUN", *Jurnal Ilmiah Advokasi*, Vol. 5, No. 1, 2017, Hal. 21 – 22.

⁹ Al Yasa' Abubakar, dan M. Daud Yoesoef, "QANUN SEBAGAI PERATURAN PELAKSANAAN OTONOMI KHUSUS DI PROVINSI NAGGROE ACEH DARUSSALAM", *Jurnal Legislasi Indonesia*, Vol. 1, No. 3, 2004, Hal. 20.

Indonesia, which was included in the territory of North Sumatra. This incident triggered the birth of the seeds of a spirit of rebellion among the Acehnese. This was reinforced by the instability of the Indonesian government at that time and the implementation of the regional autonomy system in Indonesia. This gives the impression that the Indonesian government is centralized to the island of Java alone, and gives the impression that other regions do not have the same role as those on the island of Java. The government system in Aceh, which is fundamentally different from most parts of Indonesia, and the assumption that Indonesian government is centralized only on the island of Java are strong reasons for some Acehnese people to view that the joining of Aceh as part of Indonesia is a new form of imperialism. It was the views of some Acehnese that later gave birth to a separatist movement in the Aceh region, namely GAM.¹⁰

GAM was officially declared on December 4, 1976 by Hasan Di Tiro. Hasan Di Tiro through GAM expressed his desire to separate Aceh from Indonesian sovereignty at that time. In addition, Hasan Tiro also argued that the handover of Aceh to Indonesia at the Mother's Table Conference (KMB) in The Hague in 1949 was an illegal act under international law. He emphasized that Aceh was not proven to have officially surrendered to the Dutch colonials. This is also supported by the condition of Aceh which is in a "Post Power Syndrome" situation after the end of the descendants of the Aceh sultanate as a consequence of the repressive and massive resistance during the colonial period.

The birth of GAM was evidence of the incompatibility of views on the concept of government and law between the Indonesian government and the government in Aceh at that time. The Acehnese people who are accustomed to the Aceh Qanun/Meukerta Alam Qanun as a legal and government system which is their tradition and identity, are faced with a new legal and government system that tends to adhere to the Dutch heritage system and the royal heritage on the island of Java. It was this difference of opinion that gave birth to confrontation and division by the Acehnese community which was manifested through the movement of GAM. After the formation of GAM, there were many resistance movements, both declarative and repressive. This resistance was further strengthened by the New Order government system at that time. The New Order was considered not to provide solutions and answers for the people of Aceh and instead carried out repressive silences. The repressive policies that were carried out on a massive scale to deal with the GAM conflict during the Suharto regime later became the main vehicle for the occurrence of human rights violations. This difficult situation forced GAM to flee abroad to seek international support and to defend the idea of independence for Aceh.¹¹

In fact, there have been several compromises and consolidation of the integrity of the Republic of Indonesia in the GAM case. This can be seen in the recognition of Aceh as a "Special Region" in 1959, the issuance of Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh and strengthened by the enactment of Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. (NAD). Some of these policies showed the intention of the Indonesian government at that time to legalize the Aceh Qanun which the Acehnese people believed to be a legal law. Law Number 18 of 2001 further regulates the Special Autonomy of Aceh such as the Syraiyyah Mahkamah, Qanun, Regional Institutions, Zakat, Sharia Police, Customary Leadership etc. In fact, in 2002 there was a ceasefire agreement between the Government of Indonesia and GAM. The ceasefire agreement was signed in Geneva. However, due to the inefficient handling of stopping the rebellion, then President Megawari through Presidential Decree No. 18. 2003 re-imposed military emergency status in Aceh.¹⁰ The confrontation between the Indonesian government and GAM began to reach a point of peace when the Aceh region was hit by the tsunami disaster in Aceh. December 26, 2004.

¹⁰ Andi Muhammad Asrun, dan Rahmat Rosyadi Abdu, dan Yennie K. Milono, "MEMPERTANYAKAN LEGALITAS QANUN ACEH : SESUAIKAN DENGAN SISTEM PERATURAN PERUNDANG – UNDANGAN ", Kanun Jurnal Ilmu Hukum, Vol. 21, No. 2, 2019, Hal. 282.

¹¹ Al Yasa' Abubakar, dan M. Daud Yoesoef, " QANUN SEBAGAI PERATURAN PELAKSANAAN OTONOMI KHUSUS DI PROVINSI NAGGROE ACEH DARUSSALAM ", Jurnal Legislasi Indonesia, Vol. 1, No. 3, 2004, Hal. 17.

As a result of the disaster, most parts of Aceh were affected by damage, besides that almost all sectors of life, both the economy and education, were also affected and had to stop. This is what provides another view for some Acehnese people who reject Indonesian sovereignty, that they are not ready to separate themselves from Indonesia, and the Indonesian government is very responsible for conditions in the Aceh region even though there are some people who reject Indonesian sovereignty. Although this disaster caused a lot of damage, on the one hand this disaster also gave awareness to the people of Aceh about the importance of unity and integrity as part of the territory of Indonesia. In addition, this disaster also dampened the confrontation between the two sides,¹²

From the historical aspect above, it can be understood that both *Siyasah* and Indonesian sovereignty are two things that cannot be separated from the people of Aceh. The Autonomy *Siyasah* and Aceh Qanun are the embodiment of the recognition of culture, traditions and customs as well as the identity of the Acehnese people as a sovereign society. Meanwhile, on the one hand, the people of Aceh also cannot be separated from the existence of Indonesian sovereignty, where Aceh is considered to be one unit as part of Indonesia, so there is a sense or desire to have each other. With the agreement of the Helsinki Agreement, it has become an obligation for the people of Aceh to fully recognize Aceh as part of Indonesian sovereignty. And it is the obligation of the Indonesian government to accommodate the aspirations and desires of the Acehnese people to live in areas that are run based on Islamic law. This was later realized by the Indonesian government through several laws issued after the GAM peace agreement, in which the law contained provisions that existed after the GAM Peace Agreement.

In general, various forms of policies issued in the Autonomy *Siyasah* and Aceh Qanun after the GAM Peace Agreement, have been regulated in Law No. 11 of 2006 as an update of Law No. 18 of 2001 to conform to the GAM Peace Agreement. Where in Law Number 11 of 2006, there are several aspects of life which contain elements of Islamic Sharia¹³. These things include worship

The regulation regarding the aspect of worship in the Autonomy *Siyasah* and Aceh Qanun has been regulated in Article 16 Paragraph 2 of Law Number 11 Year 2006, "The implementation of religious life in the form of implementing Islamic Sharia. The implementation of traditional life based on the Islamic religion. In addition to the two contents above, the regulation regarding the implementation of Islamic Shari'a in terms of Worship is also further regulated in the Qanun of the Province of Nanggroe Aceh Darussalam Number 11 of 2002 concerning the Implementation of Islamic Shari'a in the Field of Aqidah, Worship, and Islamic Syiar. In Article 2 of the Qanun of the Province of Nanggroe Aceh Darussalam Number 11 of 2002, it is explained that one of the objectives of the implementation of Islamic Shari'a is to foster and maintain the faith and devotion of individuals and communities from the influence of heretical teachings.¹⁴

In addition, this is also sharpened by the provisions in Article 4 which reads "Provincial, Regency/City Governments and community institutions are obliged to guide and foster the aqeedah of the people and supervise it from the influence of deviant beliefs and/or sects". Based on the two things above, it can be understood that the matter of Worship in the Aceh Qanun holds a fairly strong influence. Worship is one of the things that is very protected in this Qanun.

For example in Article 7 Paragraph 1 "Provincial, district/city governments and community institutions are obliged to provide facilities and create conditions and a conducive environment for the practice of worship. ". The purpose of providing facilities in the article above is also reinforced by the provisions in Article 9 Paragraph 1 "Every government agency, educational institution and business entity is obliged to promote and provide facilities for congregational prayers".

¹² Debora Sanur L., "Implementasi Kebijakan Otonomi Khusus di Aceh", *Jurnal Politika*, Vol. 11, No. 1, 2020, Hal. 67.

¹³ Ali Geno Berutu, *ACEH DAN SYARIAT ISLAM*, Sekolah Pascasarjana, Universitas Islam Negeri Syarif Hidayatullah Jakarta, Jakarta, 2014, Hal. 4 – 5.

¹⁴ M. Ya'kub Aiyub, "REFLEKSI PERJANJIAN DAMAI HELSINKI 2005 – 2008: KESUKSESAN DAN TANTANGAN KEDEPAN", *Jurnal of Humanity and Social Justice*, Vol. 1, No. 1, 2019, Hal. 35 – 37.

Apart from providing facilities, the regulation regarding worship is also regulated quite explicitly as stated in Article 8 Paragraph 1 "Every Muslim who does not have a *syar'i* age is obliged to perform Friday prayers". Some of the provisions above are only a few examples of arrangements in the field of worship that are regulated in this Aceh Qanun. This Qanun can also be said as a Qanun in the Aceh Autonomy *Siyasah* which specifically regulates aspects of the worship of the Acehnese people.¹⁵

Ahwal al-syakhshiyah (Family Law)

Family law referred to in the regulation of the Autonomy *Siyasah* and Aceh Qanun is Islamic Family Law, as stipulated in Islamic Sharia. This arrangement of Islamic Family Law covers various things, from marriage matters to things that smell of roses. This Qanun of Family Law was discussed by many parties, where this Qanun was considered to legalize polygamy. However, this perception was immediately refuted, where this Qanun does not only focus on polygamy, but on all matters relating to family arrangements in Islamic Shari'a. Moreover, if the content of this Qanun is deemed to deviate from the existing positive law, then the Qanun will not be legalized, according to the provisions in the hierarchy of legislation in Indonesia.¹⁶

Muamalah (Civil law)

The purpose of the muamalah above is the provisions of Islamic law which regulates material rights and rights to objects and the system of human relations with the natural environment and human relations with the natural environment and human relations with humans in matters of buying and selling, renting, borrowing and borrowing, transactions. (*ijab qabul*), unions and all types of economic business. As stated in Article 1 Paragraph 20 of Aceh Qanun Number 8 of 2014. Based on the provisions of muamalah above, it can be understood that Muamalah in Aceh Qanun tends to be a civil law in the Aceh Autonomy *Siyasah*. From 2000 to 2009 there were approximately 22 Qanuns that discussed business activities both in terms of permits and institutions from a total of 138 Qanun titles that had been issued until 2009.¹⁷

Jinayah (Criminal law)

In Aceh Qanun Number 8 of 2014, it is stated that *Jinayat* is a rule regarding *jarimah* and *uqubat*. *Jarimah* itself can be understood as an action that causes sin for the maker, while *Uqubat* is a consequence or sanction that arises from a finger. Regarding the Qanun on *Jinayah* Law, the Aceh Government has actually issued two stages. First, in 2003, three qanuns were issued, namely No. 12 of 2003 concerning the Prohibition of Alcohol, No. 13 of 2003 concerning *Maisir* (gambling), and No. 14 of 2003 concerning Seclusion. Then, the three qanuns are combined into one qanun with the addition of seven other criminal offenses.

The Qanun is Qanun No. 6 of 2014.²² Completely the *jarimah* is contained in Article 3 Paragraph 2 of Qanun No. 6 of 2014, which includes *Khamar* (intoxicating drinks), *Maisir* (gambling), *Khalwat* (two together in a closed or hidden place between men and women who are not mahram and marital ties that lead to adultery), *Ikhtilath* (intimate acts such as making out, touching - touching,

¹⁵ M. Ya'kub Aiyub, " REFLEKSI PERJANJIAN DAMAI HELSINKI 2005 – 2008 :KESUKSESAN DAN TANTANGAN KEDEPAN ", Jurnal of Humanity and Social Justice, Vol. 1, No. 1, 2019, Hal. 36.

¹⁶ Bambang Antartika, " KEDUDUKAN QANUN ACEH DITINJAU DARI ASPEK SEJARAH, PENGATURAN, FUNGSI, DAN MATERI MUATAN QANUN ", Jurnal Ilmiah Advokasi, Vol. 5, No. 1, 2017, Hal. 24.

¹⁷ Moh. Sofyan Ismail, " ANALISIS FIQH *SIYASAH* TERHADAP PARTAI POLITIK LOKALDI NANGGROE ACEH DARUSSALAM ", Jurnal Al – Daulah, Vol. 6, No. 2, 2016, Hal. 363.

hugging and kissing between men and women who are not husband and wife with the willingness of both parties, either in a closed or open place), Zina, Sexual Harassment, Rape, Qadzaf (accusing someone of committing adultery without evidence), Liwath (homo sexual acts) and Musahaqah (lesbian acts). Based on the 10 provisions of the finger above, it can be understood if.¹⁸

Qadha (Justice)

One of the important things that need to be regulated in the Autonomy Siyasa and Aceh Qanun is judicial matters. Judicial institutions in Acehnese society have existed since pre-independence times, as stated in the Qanun Meuketa Alam. In general, there are 4 enforcement agencies of Islamic law in Aceh, which consist of the Ulama Consultative Council, the Office of Islamic Law, the Sharia Court, and the Wilayatul Hisbah. The four institutions have a relationship and are related in terms of law enforcement/Islamic law in the Aceh region.

The Ulama Consultative Council is an institution that functions to provide input, consideration of guidance, and advice as well as suggestions in determining regional policy from the aspect of Islamic requirements.²³ This assembly is domiciled parallel to the Regional Government or DPRD, where this institution is independent and the provisions are regulated in a regional regulation. No. 3 of 2000 concerning the Establishment of the Organization and Work Procedure of the NAD MPU. In general, the NAD MPU is an elaboration of the specialties of the Aceh region in the field of the Role of Ulama in determining regional policies. Meanwhile, regarding the regulation of the relationship between the Government and the MPU, it is regulated in Qanun Number 9 of 2003 concerning the Work Procedure of the Ulama Consultative Council with the Executive, Legislative and Other Agencies. The Qanun also explains the authority possessed by the MPU.

The Islamic Shari'a Service is an element of the implementation of Islamic Shari'a within the Regional Government which is under the Governor. The office is responsible to the Governor through the Secretary. The task of the Islamic Shari'a Service is to carry out general and special tasks of the Regional Government and development and is responsible for the implementation of Islamic Shari'a.¹⁶

The Islamic Shari'a Service was formed as a follow-up to the implementation of Law Number 44 of 1999, which aims to improve the smooth implementation of the operational tasks of the Regional Government in the field of implementing Islamic Shari'a. In carrying out its duties and fulfilling its objectives, the Islamic Shari'a Service has 5 functions, namely, planning and preparing qanuns related to Islamic Shari'a, preparing and fostering human resources related to the implementation of Islamic Shari'a.

Implementation of tasks related to the smooth and orderly implementation of worship and the arrangement of its facilities as well as the promotion of Islamic symbols, guidance and supervision of the implementation of Islamic Sharia, guidance and counseling of Islamic Sharia. In addition to the Islamic Shari'a Service at the provincial level, there are also similar institutions that have the same function at the Regency/City level. However, it is unfortunate that the institution is still not uniform between one Regency/City and other Regencies/Cities in Aceh Province, both in terms of Organizational Structure and in terms of Naming. The Syar'iyah Court is a judicial institution that was established as a substitute for the Aceh Religious Courts but has expanded in terms of its authority than the Religious Courts in general.¹⁷

The Syar'iyah Court was established by the Central Government through the Minister of Religion on March 4, 2003 or to coincide with the New Year of 1424 H which inaugurated the Provincial and District/City Syar'iyah Courts throughout the Province of Nanggroe Aceh Darussalam

¹⁸ Ahyar Ari Gayo, "ASPEK HUKUM PELAKSANAAN QANUN JINAYAT DI PROVINSI ACEH", Jurnal penelitian Hukum De Jure, Vol. 17, No. 2, 2017, Hal. 145.

(NAD). The development of the Shari'a Justice system in Aceh began with Law Number 18 of 2001 which was later known as the PNAD Law. Article 25 – Article 26 of the PNAD Law regulates the Syar'iyah Court of NAD which is an Islamic syar'iyat court as part of the national judicial system.

The Syar'iyah Court is a judicial institution that is free from the influence of any party within the PNAD area which applies to adherents of the Islamic religion. Meanwhile, the regulation regarding the authority of the Syari'ah Court is regulated in the Qanun PNAD as the executor of the authority granted by Law Number 18 of 2001 concerning regional regulations. The Syari'ah Court in Aceh consists of the Syari'ah Court of Sagoe Regency and Banda City as the court of first instance, and the Provincial Syari'ah Court as the court of appeal located in Banda Aceh.¹⁸ Meanwhile, at the cassation level, it remains with the Supreme Court as the Highest State Court, as stated in Article 24 A of the 1945 Constitution of the Republic of Indonesia. In the field of Justice, the Syari'ah Court also has the duty to receive, examine and submit cases between Muslims in the field of Family Law.¹⁹

Wilayatul Hisbah is an instrument that has the duty and obligation to oversee and control the implementation of Islamic Sharia in Aceh. Its existence is regulated by

Qanun as well as the Governor's decision to give full authority to Shari'ah enforcement officials to carry out the entire process of escorting fully and without hesitation.²⁰ The regulation regarding Wilayatul Hisbah (WH) is contained in Law Number 11 of 2006, where the Regional Government establishes a WH which is responsible for the ongoing and the enforcement of Sharia law in the Aceh region which is also part of the Satpol PP. In addition, the regulation regarding the WH is also contained in the Governor's Decree No. 1 of 2004 concerning the Establishment of the Organization and Work Procedure of the Wilayatul Hisbah. In general, the WH plays a role in enforcing Shari'ah law by reprimanding lawbreakers, but does not have the right to make arrests. The WH is only limited to handling the violators by handing over the violators to the Regional Police.

Conclusion

The Free Aceh Movement (GAM) conflict that occurred in the Aceh region cannot be separated from the historical factors of the development of the Acehnese community itself, where the Acehnese people have a long historical relationship with Islam in its development. The GAM Peace Agreement marked that Aceh had completely become a region with special autonomy in which one of its specific forms was the recognition of the Aceh Qanun as one of the formal laws. Aceh Qanun as one of the formal laws recognized in Aceh has an equal position with Regional Regulations/Perda. So that the Aceh Qanun cannot apply to a higher level or violate the provisions of the laws above, such as the MPR Decree or the Law, to the Constitution. This is in accordance with the hierarchical provisions of the legislation in force in Indonesia, where the 1945 Constitution of the Republic of Indonesia is located as the highest legal norm in the hierarchy of legislation. So that the legal content in the Aceh Qanun will remain in accordance with other positive laws that apply in Indonesia. However, like other regional regulations, the Aceh Qanun will only apply locally to the regulated area and do not have a national scale of coverage.

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